

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NICOLE HARRIS,) Docket No. 14 C 4391
)
Plaintiff,)
)
vs.)
)
CITY OF CHICAGO, et al.,) Chicago, Illinois
) October 18, 2017
Defendants.) 2:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE AMY J. ST. EVE

APPEARANCES:

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PROCEEDINGS RECORDED BY
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1 THE CLERK: 14 C 4391, Harris vs. City of Chicago.

2 MS. MOGUL: Good morning, your Honor.

3 THE COURT: Good afternoon. It is afternoon.

4 MS. MOGUL: You're so right. I'm a little bit on
5 autopilot. I apologize.

6 Joey Mogul, M-o-g-u-l, here on behalf of Ms. Harris,
7 the plaintiff.

8 MS. HOFT: Janine Hoft also on behalf of Ms. Harris.

9 MS. AUERBACH: Nicole Auerbach on behalf of
10 Ms. Harris.

11 MR. HALE: Good afternoon, your Honor, Andy Hale on
12 behalf of the police officer defendants.

13 MS. BITOY: Jennifer Bitoy on behalf of the
14 individual defendants.

15 MR. JEBSON: Good afternoon, Judge, Scott Jebson for
16 the officers.

17 THE COURT: Good afternoon.

18 You are here for a status before trial starting next
19 week.

20 Thank you. You just provided me with a courtesy copy
21 of the deposition designations that we had talked about last
22 week.

23 And I assume nothing has changed with him, that --

24 MS. AUERBACH: No, your Honor.

25 THE COURT: Okay.

1 So, I will get you a ruling on Diante Dancy's
2 deposition designations soon.

3 I received the plaintiff's motion with respect to the
4 police officer reports. Your response is due to that on, I
5 believe, the 19th. So, I will rule on that.

6 MS. MOGUL: Your Honor, I think we've reached an
7 agreement on that.

8 THE COURT: That is even better.

9 MS. MOGUL: So, we filed the motion on Monday and
10 yesterday or two -- yes, yesterday we learned that they
11 weren't objecting to the majority of the reports that were
12 specified. They were objecting to just three. They've asked
13 now that we agree to admit a few additional reports. We've
14 agreed to do so. So, now all of those reports are coming in.

15 THE COURT: So, are all of the reports attached to
16 your October 16th motion?

17 MS. MOGUL: No, your Honor.

18 THE COURT: No.

19 MS. MOGUL: Because they're asking for, I believe,
20 five additional reports.

21 THE COURT: Okay. I was just going to say all of
22 these reports -- there are 14 reports you have identified.
23 Those plus the five additional ones?

24 MS. MOGUL: Yes.

25 Just let me -- there's more than 14 in that pack. I

1 think there's 17, because three they had previously agreed to;
2 we sought an additional 14; now there's an additional five.

3 Does that make sense?

4 THE COURT: Do you want to put on the record exactly
5 which ones?

6 MS. MOGUL: Okay. I'm going to do my --

7 THE COURT: I am asking you. If you are fine not
8 doing that -- in Paragraph 8 at Page 3, you have 14 reports
9 listed.

10 MS. MOGUL: Yes, your Honor.

11 THE COURT: So, you are not objecting, Mr. Jebson, to
12 the admission of those 14 reports, correct?

13 MR. HALE: With the exception of one. It's a
14 duplicate. It says "draft" on it.

15 THE COURT: Which one is that?

16 MS. MOGUL: It's Exhibit 3, your Honor. It should be
17 the second exhibit that you're looking at.

18 THE COURT: Okay.

19 And that's --

20 MS. MOGUL: It's the same exhibit as Exhibit 2. It
21 just has handwriting on it that says "draft."

22 THE COURT: And are you seeking the admission of
23 both?

24 MS. MOGUL: Yes.

25 MS. AUERBACH: Yes.

1 THE COURT: Okay. So, let me figure out what we have
2 to address and I will address it, if I can, today.

3 So, other than -- and that is not even -- the
4 Exhibits 2 and 3 are not identified in the 14 reports at
5 Paragraph 18. They are Exhibits 4 --

6 Well, do you have the motion before you --

7 MS. MOGUL: I do, your Honor.

8 THE COURT: -- Mr. Jebson?

9 MS. MOGUL: I can go through the exhibits. And --
10 yes. This was a little bit influx based on what was going on.

11 THE COURT: Well, let me just get a confirmation from
12 Mr. Jebson.

13 Paragraph 8 that lists 14 reports, are you objecting
14 to the admission of any of those 14 reports?

15 MR. JEBSON: No.

16 THE COURT: Okay.

17 And, then, there is also Exhibit 2 and Exhibit 3.
18 You are not objecting to the admission of Exhibit 2 to this
19 motion, but you are objecting to the admission of Exhibit 3?

20 MR. JEBSON: Yes.

21 THE COURT: And what are the other police reports in
22 here? It looks like I am missing, according to what you said
23 earlier, one more.

24 MS. MOGUL: Yes, your Honor. There's Exhibit 112
25 that's attached is not listed in Paragraph 8. That's the

1 criminal complaint charging Ms. Harris with murder. They've
2 agreed to the admission of that.

3 THE COURT: I do not see that as a police report, but
4 is that correct? You are agreeing to the admission of that?

5 MR. JEBSON: Yes.

6 THE COURT: Okay.

7 MS. MOGUL: This is two police documents that I did
8 not attach, but that both parties have agreed are the consents
9 for the polygraph examination.

10 THE COURT: Okay.

11 And you are in agreement with that?

12 MR. JEBSON: Yes.

13 THE COURT: There are two separate consents to
14 polygraph?

15 MS. MOGUL: One for Ms. Harris and one for Mr. Dancy.

16 THE COURT: Do you want to identify those by an
17 exhibit number.

18 MS. MOGUL: Sure. Plaintiff's Exhibits 96 and 97.

19 THE COURT: Okay.

20 MS. MOGUL: And, then, there's just one other exhibit
21 that -- your Honor, this is not a police report or police
22 document, but the defendants have also agreed to the admission
23 of Plaintiff's Exhibit 4, which is a report from DCFS, which
24 is also attached to this motion.

25 THE COURT: Is that correct, Mr. Jebson?

1 MR. JEBSON: It is. I mean, I would like to object,
2 but we originally did not. So -- but that is correct.

3 THE COURT: Okay.

4 So, we will turn to Exhibit 3 in a moment.

5 What are the five exhibits that you have, in your
6 compromising, agreed to the admission of?

7 MR. JEBSON: It might -- so, this is -- these are old
8 exhibit numbers. So, that can make it more confusing. I can
9 identify what they are and then we can --

10 THE COURT: Identify what they are.

11 MR. JEBSON: Okay.

12 So, the first one is Detective Kelly's GPR, general
13 progress report.

14 THE COURT: Okay.

15 MR. JEBSON: And it was our defendants' old Exhibit
16 15.

17 THE COURT: Okay.

18 MR. JEBSON: The second one is a general progress
19 report by Detectives Noradin and Kelly, and it was identified
20 as defendants' old Exhibit 13.

21 THE COURT: Okay.

22 MR. JEBSON: The next one is Detective Wo, W-o,
23 general progress report; and, that is defendants' old Exhibit
24 No. 20.

25 THE COURT: Okay.

1 MR. JEBSON: The next one is also another general
2 progress report, Detective Wo; and, that was defendants' old
3 Exhibit 19.

4 THE COURT: Okay.

5 MR. JEBSON: The next one is Sergeant Bartik's
6 polygraph case review worksheet, and that was defendants' old
7 Exhibit No. 34.

8 THE COURT: Okay.

9 And you are not -- I am sorry, were there any
10 additional ones?

11 MR. JEBSON: I don't think so.

12 Just to kind of give a background -- so, the reason
13 why we're coming to this agreement is they wanted the CLEAR
14 and CLOSED supplemental report. So, we wanted to make sure if
15 they're going to get the following report, they're going to
16 get all the GPRs. And I went through that, and those are the
17 five that I believe would encompass all five. If for some
18 reason I missed one, I will certainly bring it up. I think
19 that's all of them.

20 THE COURT: Okay.

21 And you are not objecting to the admission of those
22 documents Mr. Jebson just identified, correct?

23 MS. MOGUL: No, your Honor.

24 THE COURT: Okay.

25 So, a large portion of your motion is denied as moot

1 in light of your agreement. The only issue is Exhibit 2
2 versus Exhibit 3. Is Exhibit 3 identical to Exhibit 2 with
3 the exception of "draft" handwritten on both pages?

4 MR. JEBSON: Almost. The other difference is that it
5 is not signed as being approved.

6 And I can explain why I believe it has the word
7 "draft" on it. I don't know if you want to get into that now,
8 but --

9 THE COURT: It is not signed -- it is signed by the
10 reporting officer Wo, it looks like, but not by the
11 supervisor.

12 MR. JEBSON: Right.

13 THE COURT: Okay.

14 MR. JEBSON: So, do you want me to explain why I
15 believe --

16 THE COURT: Yes.

17 MR. JEBSON: Okay.

18 So, what happened in this case is Detective Wo, he
19 brought the younger brother to be interviewed by the
20 Chicago --

21 THE COURT: The older brother.

22 MS. AUERBACH: Right.

23 MR. JEBSON: I'm sorry, the older brother.

24 -- to be interviewed by the Chicago Children's
25 Advocacy Center --

1 THE COURT: Yes.

2 MR. JEBSON: -- by Ally Levy.

3 THE COURT: Yes.

4 MR. JEBSON: So, he gives his interview; he takes
5 down his notes in the GPR; and, at the end, he hands out
6 copies of his GPR to Ally Levy.

7 THE COURT: And is this the GPR that he -- of Wo's
8 notes from the interview?

9 MR. JEBSON: Yes.

10 THE COURT: Okay.

11 MR. JEBSON: So, we believe what happened is that
12 someone from the child advocacy center wrote "draft" on there.
13 And this is how we believe that this happened.

14 And if I can hand up Exhibit 14.

15 (Document tendered to the Court.)

16 MR. JEBSON: So, if you look at the first page,
17 that's from the Children's Advocacy Center; and, you can see
18 the word "draft" on there.

19 THE COURT: It looks like the same writing.

20 MR. JEBSON: Exactly.

21 So, what we think happened is that whoever got the
22 copy from Detective Wo wrote "draft" on it, which is
23 consistent with writing "draft" on their own sheet.

24 And I should also add a couple days ago -- maybe it
25 was yesterday -- the parties went down and looked at the

1 original general progress report at police headquarters, and
2 it does not have the word "draft" on there.

3 THE COURT: So, what is your objection?

4 MR. JEBSON: That there's no foundation, and it will
5 be misleading to the jury because I think that the plaintiff
6 wants to argue that the word "draft" was written by the
7 detective or someone from the police department when I think
8 that clearly shows it was not.

9 THE COURT: Ms. Mogul?

10 MS. AUERBACH: It's actually going to be me.

11 I'm sorry, I didn't see what was handed up.

12 THE COURT: It is Plaintiff's 14. I will hand it
13 back to you.

14 MS. AUERBACH: Okay. If you don't mind.

15 THE COURT: It looks like it is Exhibit --

16 MR. HALE: I have another copy here.

17 THE COURT: Great. Thank you.

18 MR. JEBSON: I think it's Defendants' 14, Judge.

19 MS. MOGUL: It's Bates stamped --

20 THE COURT: You are right. It is defendants'. It is
21 Bates stamped with a plaintiff's Bates stamp.

22 MS. AUERBACH: So, your Honor, Ms. Levy testified
23 that they don't keep any notes. They don't keep any
24 documents. In fact, they are essentially -- they come in to
25 do the interview and they don't keep a file --

1 THE COURT: They do not take their own notes?

2 MS. AUERBACH: They don't not only take their own
3 notes, they don't keep any documents. They don't have a file.
4 This was an emergency interview. It was done on a Sunday.
5 She did it herself. There was no staff, et cetera, et cetera.

6 And, so, the idea that Ms. -- I believe that
7 Ms. Levy -- I showed her this in her deposition. She
8 testified that she did not keep a copy of this GPR and she did
9 not know who wrote "draft" or why it has "draft" on it, but it
10 would not be in her habit to retain any of the GPRs. She
11 makes copies to the extent that there's anybody there other
12 than the officer who is taking the notes, and she gives the
13 original back to the officer. So --

14 THE COURT: Did you -- the first page of defendants'
15 Exhibit 14 looks like it is a document from the Chicago
16 Children's Advocacy Center, not --

17 MS. AUERBACH: That's correct.

18 THE COURT: So --

19 MS. AUERBACH: It does look like that.

20 THE COURT: -- is this from Ms. Levy's files?

21 MS. AUERBACH: I don't believe so. I mean, the
22 underlying document is.

23 THE COURT: "This" being the first page. Is that
24 from her files?

25 MS. AUERBACH: The underlying document without the

1 word "draft" is, but it's got a Bates stamp with Nicole
2 Harris, which probably means that it was produced at some
3 point by somebody to Nicole's underlying attorneys and that's
4 how it was given. To the extent that it was from CAC directly
5 in this litigation, it wouldn't have been Bates labeled
6 plaintiff Nicole Harris. It would have the moniker of
7 whatever entity was producing it.

8 THE COURT: Has anybody been able to identify whose
9 writing this is -- "draft" -- on the front?

10 MS. AUERBACH: No.

11 THE COURT: I think I am going to have to wait until
12 trial and see what kind of foundation you can lay for this, if
13 you can identify --

14 MS. AUERBACH: So, just --

15 THE COURT: -- whose writing that is.

16 MS. AUERBACH: Just to be honest, your Honor, the
17 reason why -- okay. I get it. That's fine.

18 THE COURT: And the reason why -- go ahead. Why is
19 it you are seeking to admit this, your Plaintiff's 3 -- or
20 maybe it's Defendants' 3, but Exhibit 3 to your motion -- in
21 addition to Exhibit 2?

22 Exhibit 2 is coming in, which is --

23 MS. AUERBACH: Right.

24 THE COURT: -- the final report.

25 MS. AUERBACH: I need to double-check before I make a

1 representation as to whether or not a version of this report
2 from Exhibit 2 was produced with "draft" from the City. My
3 recollection was that it was. And to the extent that it was
4 produced by the City, that means that it was in police or
5 City's possession at some point.

6 And it's our theory that when this report came back
7 to Area 5 in the course of this investigation, it was after
8 the polygraph exam and after Nicole Harris had capitulated and
9 said she would confess; and, then, Detective Wo came back and
10 said this is what the brother said and they believed that it
11 was quite damning to now a confession, and that somebody wrote
12 "draft" over it in order to, I don't know, make it seem
13 someone came across this, that it's not -- you know, it's not
14 final or to sort of draw attention away from it.

15 THE COURT: Looking at Exhibit 2, when was Exhibit 2
16 finalized in connection with the question --

17 MS. AUERBACH: So, the testimony from Detective Wo is
18 that he wrote Exhibit 2 while he was at CAC and he signed it.

19 THE COURT: Right.

20 MS. AUERBACH: And, then, at some later date, which
21 is dated May 23rd, a supervisor put the supervisor's
22 signature.

23 THE COURT: And remind me, is that around a week
24 later? Where is that in connection --

25 MS. AUERBACH: May 14 -- this interview with Diante

1 Dancy was May 15th, the day after the death of his brother.

2 THE COURT: Okay.

3 MS. AUERBACH: So, May 15th to May 23rd it's in
4 police custody.

5 THE COURT: But there is no difference. And I have
6 not compared them, but if Exhibit 2 is identical to Exhibit
7 3 -- so, if the final version of Exhibit 2, which you say is
8 damning to the theory that she did this, if the final version
9 is damning --

10 MS. AUERBACH: Why would they even have submitted
11 that ever?

12 THE COURT: Or why -- what is the weight of what you
13 are trying to argue?

14 MS. AUERBACH: It goes hand in hand with what was
15 done with respect to this report in the CLEAR and CLOSED, for
16 example, and at a later date.

17 So, I agree that there is a submission of the final
18 report without "draft" across it. But Detective Wo said it
19 was his report. Nobody asked him. It's unclear why anybody
20 ever would have put "draft" across this if it was final, as
21 Detective Wo wrote. If it's final, then why is anyone writing
22 "draft" anyway? Nobody consulted him. He said that nobody
23 came and told him he was doing this.

24 So, it's just odd that somebody would write "draft"
25 across a final report regardless.

1 THE COURT: Okay. Well, I will have to wait and
2 hear --

3 MS. AUERBACH: Okay.

4 THE COURT: -- what the testimony is and if you can
5 lay a foundation. And you might be in a different position if
6 it came from the City's files. Certainly let them know and
7 maybe you can track down exactly who it came from.

8 I am not sure your theory -- based on what you have
9 just told me, I am not sure it really matters if the draft
10 comes in or not if Exhibit 2, the final report, is identical
11 to draft. It is about a week later. It was in the City's
12 files. And if it is damning to their theory that the
13 plaintiff committed the murder and it is there and final, I am
14 not sure --

15 MS. AUERBACH: It's not all --

16 THE COURT: If Exhibit 3 does not come in, I do not
17 know that -- I think you have the same argument, but --

18 MS. AUERBACH: I understand. It's not all clean and
19 it's not all tidied up as we'd like. So, I understand what
20 you're saying.

21 THE COURT: I will see if you can lay the foundation
22 at trial.

23 MS. AUERBACH: Okay.

24 THE COURT: So, I will keep that under advisement
25 until we hear what the foundation is, and the remainder is

1 denied as moot in light of your agreement.

2 Your demonstratives, did you get together and talk
3 about those and reach agreement on those? I had directed you
4 last time you were here to meet, since you had not discussed
5 those yet.

6 MR. JEBSON: We have an objection to the elastic band
7 that their expert wants to use. So, this is -- their expert,
8 Dr. Stevens, he's going to testify regarding strangulation and
9 hanging, stuff like that. So, apparently, he has an elastic
10 band he's going to wrap around his wrist and say that, look
11 it, after wrapping around my wrist, it's not showing multiple
12 ligature marks; so, that means you can wrap an elastic around
13 someone's neck and not show any ligature marks.

14 THE COURT: Is that accurate?

15 MS. MOGUL: Well, I wouldn't say that he's going to
16 wrap it around his wrist, but he did bring this elastic band
17 to his deposition. The defendants had notice of it. They
18 were allowed to question him at his deposition. He described
19 the properties of the elastic band. He described the -- you
20 know, the print -- both its clinging nature and the way it
21 wraps. And, so, they had an opportunity to question and an
22 opportunity to examine it themselves and ask him to do
23 whatever they wanted with it.

24 He is going to bring this elastic band and describe
25 its properties and be able to show the jury. Whether it's

1 going to be on his wrist, I don't know, your Honor. I'm
2 not -- I'm going to be honest with you. I haven't fully
3 prepared him to testify yet. But it is -- in this case, you
4 know, there is a big issue with regards to whether there were
5 multiple indentations or lines across Jaquari's neck. And
6 whether the -- the type of material that that elastic band is
7 made of is absolutely relevant to what kind of marks would be
8 made.

9 THE COURT: In reaching his opinions, is this
10 something that he used and wrapped around his wrist in --

11 MS. MOGUL: I believe he --

12 THE COURT: -- reaching his opinions?

13 MS. MOGUL: I don't know if he wrapped it around his
14 wrist, but he certainly used it and considered it and assessed
15 it in making his opinions.

16 THE COURT: If he used it and assessed it in making
17 his opinions -- that is one thing -- and you had the
18 opportunity to question him about it, then he can use it
19 during his testimony. But I am not sure wrapping it around
20 his wrist as a demonstrative in front of the jury is proper if
21 that is not something he did during his preparation.

22 As a demonstrative when we are talking about the neck
23 and the wrist, which the skin is different, I do not know that
24 we are comparing apples to oranges.

25 So, he can certainly bring it. He can certainly use

1 it. He can talk about how he used it in reaching his
2 opinions. But if he is going to wrap it around a body part to
3 demonstrate something, you will have the opportunity to object
4 and we can talk about it during the course of his testimony.

5 Sitting here today, without hearing the doctor -- but
6 I have read enough of these reports during the Dauberts in
7 advance -- I do not know that demonstrating how it impacts the
8 skin by wrapping around the neck would be comparing apples
9 to -- by wrapping around the wrist would be comparing apples
10 to oranges with the neck.

11 MS. MOGUL: Okay.

12 MR. JEBSON: Your Honor, I may be wrong about this,
13 but I do not think that he mentioned this elastic band in his
14 report. I think he just brought it to the deposition.

15 THE COURT: I do not have that before me, so I am
16 accepting your representation that it is something he used in
17 reaching his opinions, which I would assume would be somehow
18 disclosed either at the deposition or in the report.

19 MS. MOGUL: I mean, that's -- I mean, what I can say,
20 your Honor, is he did bring it to the deposition. He
21 described it. It was there for them to examine. It was there
22 for them to ask him to make any demonstrations with it. You
23 know --

24 THE COURT: If he just brought it to the deposition
25 and it is not something he relied on in reaching his opinions,

1 that is a different issue. But I am accepting your
2 representation that he relied on it and used it in reaching
3 his opinions.

4 MS. MOGUL: And that's my under- --

5 THE COURT: If not, then there is a different issue.

6 MR. JEBSON: So, we will just bring this up before he
7 testifies if we --

8 THE COURT: You should talk. You should go back. If
9 it is not in the report, if you do not think it is in the
10 report or you do not think it is something disclosed, you
11 should go back and raise it with Ms. Mogul.

12 And if it is in there, point to him where it is.

13 MS. MOGUL: Okay.

14 THE COURT: Or if it was disclosed during his
15 deposition as something that he used and relied on, since you
16 had the opportunity to question him about it, that is fair
17 game, as well. If he just shows up with something that has
18 never been disclosed or revealed as something he has relied on
19 or intends to rely on, that is a different issue.

20 MR. JEBSON: And I don't think he did mention it in
21 the report. But let's say that he did and he comes to the
22 deposition. I still think that we have a basis to keep it --
23 to bar it because just because he says he's basing it -- he's
24 based his opinions on something that has no scientific basis
25 to base his opinion on --

1 THE COURT: You cannot start raising Daubert-type
2 questions now when I have ruled on 12 Daubert motions.
3 Dauberts were due a long time ago. So, I am hearing a Daubert
4 issue now if you are saying there is a scientific basis, which
5 is something different than you said before -- surprise
6 demonstrative, not something he relied on. Those are two
7 different issues.

8 You cannot raise a Daubert scientific on the eve of
9 trial when there was a time for thorough briefing of Daubert
10 motions.

11 MR. JEBSON: And I won't do that, Judge. I won't
12 make any arguments that could have been made before.

13 THE COURT: But if it is a "this is not a proper
14 demonstrative because he did not rely on it in his opinions,"
15 that is a separate issue that you may bring.

16 What about other demonstratives? Did you --

17 MS. MOGUL: I mean, well, there's this -- you know,
18 we have a continual argument with respect to the autopsy
19 photos.

20 THE COURT: Well, if they are not -- I see those as
21 exhibits, not as demonstratives. I have ruled on so far what
22 is admissible. There were some that were under advisement
23 that I needed to hear the testimony on. If you have more to
24 offer now on the testimony -- you cannot use them in opening.

25 MS. MOGUL: We agree. We agree with that. And we

1 understand your ruling, and that is fine with us.

2 MR. JEBSON: And I was going to bring this up. It
3 sounds like you don't want any argument. Because this is
4 going to be a big part of our case, the ligature. And we
5 wanted to bring it up in the opening. And Dr. Stevens is
6 going to be, I think, their second witness. So, I don't --

7 THE COURT: I am not saying you cannot argue it, but
8 if the exhibits are not admitted or not objected to, you
9 cannot use them in openings. I am not saying I am not going
10 to admit them during the course.

11 I believe what I said with respect to the neck when I
12 ruled on this in your motion in limine was I needed to hear
13 more testimony to make a determination as to their
14 admissibility.

15 But if you want to educate me more, Mr. Jebson, about
16 the issue so that I can make those --

17 MR. JEBSON: Sure.

18 THE COURT: -- in the context, go ahead.

19 MR. JEBSON: Yeah. The reason why I think it might
20 be better to bring it up now is because it's going to come up
21 in the cross-examination of their expert.

22 THE COURT: Okay.

23 MR. JEBSON: So, it won't be on the witness that
24 we're putting forward.

25 So, I know you know the main issues in this case,

1 that we're obviously claiming it was a homicide and they're
2 claiming it was an accident. So, we have two forensic
3 pathologists who are going to testify: The ME and the person
4 that we hired. And they are both going to testify that,
5 because of the ligature, it was a homicide and, because of the
6 ligature, it could not have been an accident. And because of
7 the lig- --

8 THE COURT: And how are they going to define "the
9 ligature"?

10 MR. JEBSON: So, can I hand up --

11 MR. HALE: Actually, Judge, I have a copy of all of
12 our exhibits. Can I just give the whole thing?

13 THE COURT: For me?

14 MR. HALE: Yeah. I have a hard copy and also have
15 them on a disc for you.

16 Can I just take back the 14 we gave you? And there's
17 a 14 in this folder.

18 (Document tendered to the Court.)

19 THE COURT: There you go. There is your 14 back.

20 MR. HALE: What Scott's going to be referring to is
21 Exhibit 1. I think it's 1-1, 1-2 and 1-3.

22 THE COURT: Okay.

23 MR. JEBSON: So, if you look at Defendants' 1-1,
24 please.

25 THE COURT: And I believe these are ones I took under

1 advisement.

2 MS. MOGUL: Yes.

3 THE COURT: I do not remember the exact exhibit
4 numbers, but I believe these are ones that I said I could not
5 rule on without more.

6 MR. JEBSON: Sure.

7 THE COURT: So, I have 1-1. Go ahead.

8 MR. JEBSON: So, the ME and our expert is going to
9 say that it could not have been an accident. In other words,
10 we believe that they're going to argue that the child wrapped
11 it around his neck multiple times and either strangled --

12 THE COURT: The bed sheet.

13 MR. JEBSON: The elastic from the bed sheet.

14 THE COURT: Yes.

15 MR. JEBSON: And either hung himself or strangled
16 himself to death.

17 So, the ME and our expert is going to say that if
18 that elastic band was wrapped around multiple times, the
19 ligature would go around. You would see multiple loops.

20 THE COURT: Define "ligature" for me in the sense
21 that you are using it.

22 MR. JEBSON: A ligature mark is the mark on the neck.
23 The ligature is the elastic band.

24 THE COURT: Okay.

25 MR. JEBSON: So, it's the instrument.

1 THE COURT: So, it is not the mark. The ligature --

2 MR. JEBSON: The ligature mark is the mark, and the
3 ligature is the instrument that causes the mark.

4 THE COURT: Okay.

5 MR. JEBSON: So, both forensic pathologists --

6 THE COURT: You may want to make that clear to the
7 jury.

8 MR. JEBSON: I know. It's confusing.

9 THE COURT: That there is a difference between the --
10 and in some of the submissions, if I remember, I thought the
11 ligature was referencing the mark itself.

12 MR. JEBSON: Right.

13 THE COURT: Just you all may want to make that clear
14 to the jury.

15 MR. JEBSON: It's also called -- will be referred to
16 as a furrow, also. The furrow is the mark.

17 THE COURT: The furrow is the mark?

18 MR. JEBSON: Yes. So, ligature mark and furrow are
19 the same thing. Ligature is the elastic.

20 So, our expert and the ME is going to say that if the
21 elastic was wrapped around multiple times to cause either
22 strangulation or to cause a hanging, which would -- they're
23 going to say was an accidental death, the ligature mark would
24 be all the way around. And no question about it, they're
25 going to say.

1 So, if you look at Exhibit D-1 and --

2 THE COURT: 1-1?

3 MR. JEBSON: I'm sorry, yes, 1-1.

4 So, that shows that there's a ligature mark on the
5 left side of his neck, but it shows a gap. So, in other
6 words, it's showing it does not go all the way around. So, if
7 you look at Exhibit 1-2, that is now a close-up of the
8 ligature mark on the left-hand side, and you can see that it
9 is more prominent on that left-hand side.

10 And what our expert is going to say, what that is
11 consistent with is someone from behind on the right using
12 force pulling the elastic which would cause that ligature
13 mark. And he will say that, again, if it was wrapped around,
14 the ligature mark would look nothing like this. It would look
15 like this all the way around.

16 THE COURT: Ms. Mogul, remind me for these two
17 photos, 1-1 and 1-2, was your objection relevance or 403?

18 MS. MOGUL: 403.

19 THE COURT: Okay.

20 MS. MOGUL: I mean, your Honor --

21 THE COURT: Let me -- I will come back to you. Let
22 Mr. Jebson finish. I just wanted to get an understanding.

23 MR. JEBSON: So, these are obviously close-up
24 pictures of the ligature mark, 1 and 2. And the other
25 important part about the ligature mark, as you can see, this

1 is a horizontal mark; and, what the experts are going to say
2 is that a horizontal mark is consistent with a strangulation
3 and inconsistent with a hanging. If it was a hanging, the
4 ligature mark would be going -- they call it canted. It would
5 be upwards. It would not be horizontal.

6 So, that's why the pictures are very important.
7 Because by just conceding that there is a partial ligature
8 mark on the neck does not get into the details regarding if
9 it's horizontal; if there's more of an indentation on the left
10 side, which shows that there was force applied to it from
11 behind. The coloration is important.

12 If you look at 1-3, the reason why this is important
13 -- and this is not a good copy, but we have digital copies --
14 this really shows the gap between the ligature mark and bare
15 skin on the right side. Again, the experts will say that if
16 this was an accidental death, the ligature mark would go all
17 the way around and would be as pronounced all the way around.

18 THE COURT: What about the 403 aspect of 1-3? You
19 are really showing the --

20 MR. JEBSON: In terms of the third picture?

21 THE COURT: The third picture.

22 MR. JEBSON: Well --

23 THE COURT: You are showing a lot more of the body
24 here.

25 MR. JEBSON: That's true. I mean, it's not -- I

1 mean, any time that you show a child that has died is going to
2 be -- you know, it's not a great thing to show the jury. But,
3 unfortunately, it's -- I mean, thankfully you haven't seen the
4 other autopsy pictures, which are --

5 THE COURT: No, I did, because they were submitted.

6 MR. JEBSON: Oh, okay.

7 THE COURT: Your prior counsel were seeking to admit
8 all of them, and I made some rulings on many of them.

9 MR. JEBSON: Well, we're not seeking those.

10 THE COURT: I have already ruled.

11 MR. JEBSON: So, I mean, I agree that no one wants to
12 see this. But, unfortunately, to prove our case, we have to
13 show this because this picture is different than the close-ups
14 because this picture gives the angle of showing the gap.

15 Now, if there's a way that we can somehow zoom in
16 closer, we're happy to try to do that. I mean, we would
17 prefer to do that. But if we can't do it, we can't do it.
18 So, in terms of 1-4, there's a issue regarding the petechia.
19 And petechia -- I don't know how much you know about this --

20 THE COURT: Okay. Before we go to that, let me just
21 ask Ms. Mogul about the ligature.

22 Do you agree -- and I think you do -- that the
23 ligature is going to be an issue?

24 MS. MOGUL: Yes, your Honor.

25 THE COURT: And do you agree with what Mr. Jebson

1 just represented their expert is going to testify about?

2 MS. MOGUL: Yes.

3 THE COURT: Okay.

4 MS. MOGUL: But I will also say, your Honor, that
5 the -- that our expert and their expert don't disagree with
6 what Denton's findings are regarding where the ligature was
7 marked or noted or the ligature mark is on the neck. Okay?
8 So, that's not in dispute. Our expert's not going to come in
9 and say, oh, I see it all the way around the neck. That's, in
10 fact -- so, what this is, is showing pictures to them that are
11 about marks that are not in dispute. And instead, what we are
12 now doing is showing very graphic disturbing photos of a young
13 four-year-old who is deceased lying on a metal slab. Okay?

14 So, you know, these are very upsetting photos for
15 people to look at. And it is already involved -- this case is
16 a very upsetting case because we are talking about the tragic
17 loss of a four-year-old. So, I'll say this: We find this
18 particularly inflammatory to be shown in opening.

19 THE COURT: I am not going to let them show it in
20 opening. I have already -- the question was admissibility.

21 MS. MOGUL: Okay.

22 With respect to the ligature marks, your Honor, as to
23 coming in with certain experts, we were willing to concede
24 that the ones that just showed the neck we could see being
25 shown for demonstrative purposes. But, for example, the one

1 he just showed of the back, I think, is highly -- is not -- is
2 not necessary --

3 THE COURT: So, are you not objecting or are you
4 withdrawing your objection to 1-1 and 1-2?

5 MS. MOGUL: I guess to 1-1 and 1-2, yes, your Honor,
6 we would.

7 MS. AUERBACH: To be shown with the experts.

8 MS. MOGUL: To be shown with the experts.

9 THE COURT: Are you seeking these for demonstrative
10 only --

11 MR. JEBSON: No.

12 THE COURT: -- or for admission?

13 MR. JEBSON: We are seeking to admit them, yes.

14 THE COURT: I think 1-1 and 1-2 will likely come in.
15 I will have to hear it. I do not see those as overly
16 prejudicial and, given what I am hearing, there certainly is a
17 probative value to them.

18 1-1 is the back of the head. I certainly cannot even
19 tell this is a child. I know there will be testimony about
20 that. But it is probative -- the probative value of each of
21 these is certainly not substantially outweighed by undue
22 prejudice, given the angle of these autopsy photos.

23 And as I have said, given the representation -- and
24 there is no objection -- that this is a relevant issue, those
25 two will likely come in.

1 I am not going to let you use these in opening. You
2 can talk about the issue, but I am not going to let you use
3 these in openings.

4 1-3 is a closer call. If I let you -- if I let 1-3
5 in at all, I am not going to let the bottom half in. And if
6 it is digital, you should be able to work with that.

7 MR. JEBSON: Okay.

8 THE COURT: But I will keep 1-3 under advisement.

9 MR. JEBSON: And could we show you the digital
10 version of 1-3 so you can get -- because it's hard to make my
11 argument with this bad a picture.

12 THE COURT: Yes.

13 Do you have it with you?

14 MR. JEBSON: I don't. I'm sorry, Judge. But I will
15 bring it next time.

16 MS. AUERBACH: Could I just ask a question to
17 counsel?

18 THE COURT: Yes.

19 MS. AUERBACH: Are you only using it for purposes of
20 the neck or is there some other purpose that you're
21 attempting --

22 MR. JEBSON: That's it.

23 MS. AUERBACH: -- something else you're attempting to
24 show?

25 MR. JEBSON: No, just the neck.

1 THE COURT: Okay.

2 So, then 1-4 -- by the way, I only have until 3:00.
3 I have a 3:00 o'clock. I am happy to spend the time on this.
4 Are there other issues for me outside of these autopsy photos?

5 MS. MOGUL: I mean, there's a lot of autopsy photos
6 at issue here, and I'm not sure it's worthy to fight this out
7 right now.

8 THE COURT: Okay.

9 Are there other issues besides the autopsy photos
10 that we need to get to this afternoon?

11 MR. JEBSON: Just one clarification --

12 THE COURT: Yes.

13 MR. JEBSON: -- and I should know the answer to this;
14 I will preface my question -- about jury selection. I know
15 you've explained it many times. I just want to make sure.

16 THE COURT: And you have done it before me.

17 MR. JEBSON: I know.

18 THE COURT: I have not changed.

19 MR. JEBSON: I know. Well, because when we went
20 back, when Andy told me the way it was, I said I don't think
21 that's the way it is.

22 I know you ask everyone, the whole venire, questions.

23 THE COURT: Yes.

24 MR. JEBSON: And, then, do you put 16 in the box?

25 THE COURT: I put 16 in the box and ask them the

1 questions, and then I will excuse those 16; and, then, I put
2 another 16 in the box and ask them the same questions; and, we
3 go through that until I have questioned the entire venire.

4 MR. JEBSON: And, then, when you --

5 THE COURT: And we do not exercise strikes until I
6 have questioned everybody.

7 MR. JEBSON: And, then, when you put the 16 -- then
8 you put 16 back into the box.

9 THE COURT: Once I have questioned them, I am done.
10 The 16 -- the second round of 16 will be ones I have not
11 questioned yet. So, I will put 16 in. I will ask them
12 individual questions based on my letter. I will do follow-up
13 that is not in the letter. I will do that with all 16. Then
14 I will ask them some group questions. And, then, if we need
15 to do follow-up with anybody at sidebar, I will have them come
16 down and we will do follow-up at sidebar. And I will ask you
17 at that point, "Do you have any further questions?"

18 Once we are done with that whole process, I will
19 excuse those 16 and tell them to come back in two hours and I
20 will put the next 16 in, and we will go through the same
21 process. I do not take your strikes until we have questioned
22 the entire panel.

23 MR. JEBSON: And, then, when you pick the jury, what
24 are the first 16 that we pick from?

25 THE COURT: Well, we will not have 16. We are going

1 to have 10, possibly 12, depending on the panel. But we are
2 going to have 10. The first 10 that have not been struck for
3 cause or peremptories will be our jury.

4 MR. JEBSON: In the order you originally called them?

5 THE COURT: In the order I originally called them.

6 So, if No. 5 is not struck --

7 MS. AUERBACH: That's your first --

8 THE COURT: -- and the first four have been struck,
9 No. 5 will end up being our first juror.

10 MR. JEBSON: Okay. Thank you.

11 THE COURT: Does that make --

12 MR. JEBSON: Yes.

13 THE COURT: Okay.

14 Other than that, are there any other issues besides
15 the autopsy photos that you need me to address today?

16 MS. AUERBACH: Any other issues relating to anything?

17 THE COURT: To the trial.

18 MS. AUERBACH: Yes.

19 Your Honor, we have an issue with some witnesses,
20 particularly one witness who was removed from the witness list
21 and then put back on just yesterday. And the exhibits related
22 to this witness were removed in the last iteration of the
23 revised exhibit list.

24 THE COURT: Who is that witness?

25 MS. AUERBACH: That is Dr. Frumkin. Dr. Frumkin --

1 THE COURT: He is on the "May Call" list.

2 MS. AUERBACH: He's on the "May Call."

3 THE COURT: Okay.

4 MS. AUERBACH: And the reason why we're concerned
5 about that is, you know, it's a week before trial. We relied
6 on the representation that they wouldn't be calling him
7 earlier. He's out of state. There are a number of potential
8 hearsay issues or other issues with any testimony of his that
9 would come in.

10 Technically, he's unavailable. I don't know if
11 they've been in contact with him and they're planning to have
12 him come live, but --

13 THE COURT: Who is he?

14 MS. AUERBACH: Do you want to describe your witness?

15 MR. JEBSON: Well, it's their expert that they
16 dropped, that the defendants had listed all along as a "may
17 call."

18 THE COURT: What type of expert? Because you have
19 him listed here as a fact witness.

20 MR. JEBSON: Right. So, the plaintiff made
21 admissions to this person and --

22 THE COURT: What type of expert is he?

23 MR. HALE: He was -- your Honor, he was a
24 psychologist or psychiatrist at the Cook County jail. I'm
25 sorry, no.

1 MS. AUERBACH: No.

2 MR. HALE: You guys -- let me preface. Back in 2006,
3 when Nicole Harris was going through her post-conviction
4 proceedings, he was retained by her legal team and then he
5 gave a report. He interviewed her for eight hours at the Cook
6 County jail. They disclosed him as an expert in this case.

7 MR. CHANEN: No, no, not this case.

8 MR. HALE: In that case.

9 THE COURT: Mr. Chanen, do not come up here and start
10 causing trouble. I am not kidding. I will give you the
11 opportunity to address it. Let him finish.

12 MR. HALE: I'm going to turn it back to them in one
13 second. The point was he interviewed Nicole Harris for eight
14 hours at the Cook County jail, and notes were produced in this
15 case of those interviews. He was on our original pretrial
16 order as a "may call." Both sides have gone back and forth on
17 that, you know, and we've got a final version. But he was on
18 the original pretrial order.

19 We simply list him as a fact witness for potential
20 impeachment. And what I would propose doing if it's -- if it
21 turns out this way, if I say to Nicole Harris, "Did you tell
22 Dr. Frum- " -- "you met with Dr. Frumkin on this date. Did
23 you tell him -- " I'm just making this up " -- did you tell
24 him that Jaquari fell off the top bunk?" If she says "No," I
25 would designate the deposition. That's impeachment.

1 THE COURT: To perfect your impeachment?

2 MR. HALE: To perfect the impeachment.

3 And I would simply call him through deposition
4 designations to perfect the impeachment. And that's why we
5 list him as fact only.

6 THE COURT: So, is your only purpose in calling him
7 to perfect impeachment if Ms. Harris denies that she told him
8 something?

9 MR. HALE: Correct.

10 THE COURT: You do not plan to call him, then, to
11 testify about --

12 MR. HALE: No.

13 THE COURT: -- what she said if her testimony is
14 consistent or if it is on something that is inconsequential?

15 MR. HALE: Right. If I ask her -- so, I intend to
16 ask her, did you tell Dr. Frumkin A, B, C? If she testifies
17 consistently with what's in his notes, that's it.

18 THE COURT: Okay. Then I think I will have to hear
19 her testimony --

20 MR. HALE: Okay.

21 THE COURT: -- and see.

22 That is different than what I think you thought he
23 was going to be called for. I think I will have to hear her
24 testimony.

25 MR. HALE: Okay. Fair enough.

1 THE COURT: Mr. Chanen, you are sitting back down.
2 Do you have nothing to say now?

3 MR. CHANEN: Thank you, your Honor.

4 Stuart Chanen. I'm also on behalf of the plaintiff.

5 Judge, you dealt with this a little bit in the
6 Wasyliw opinion because -- I just want to remind the Court
7 that Mr. Drizin and Ms. Flaum, while they represented
8 Ms. Harris in federal habeas procedure, hired Dr. Frumkin.
9 From the very start of this case, we never -- he was never our
10 witness. And what they tried to do was say because Frumkin
11 was hired in the federal habeas case, we're entitled to bring
12 in Dr. Wasyliw now.

13 THE COURT: Right. I ruled on that. Right.

14 MR. CHANEN: Right.

15 And, so, I just want it to be clear that to suggest
16 that we had made Dr. Frumkin or his conclusions or his
17 interview or his notes or his report any part of this case, we
18 had never done that. And they both took Dr. Frumkin off their
19 list orally and they took Dr. Frumkin off their list
20 physically, and then he reappeared yesterday. And that's the
21 problem we're having.

22 THE COURT: And now I understand that it is for a
23 limited -- potentially perfecting of impeachment --

24 MR. HALE: Right.

25 THE COURT: -- not to call him just to testify about

1 her statements to him.

2 MR. HALE: Right.

3 And just one little final footnote. For instance,
4 when the plaintiff filed their revised witness list yesterday,
5 they added Karen Wilson.

6 MS. MOGUL: And we're happy --

7 MR. HALE: So, I mean, you know, that's not really an
8 issue.

9 THE COURT: We are not going to get in a tit-for-tat.
10 Now I understand. I will have to hear Ms. Harris' --

11 MR. HALE: Okay.

12 THE COURT: -- testimony.

13 MS. MOGUL: At this point, your Honor, the only
14 reason Ms. Wilson was added back on is because they were
15 objecting to one of the exhibits that they previously agreed
16 to. Now that they've agreed to her, we don't have to lay the
17 foundation. We're happy to remove her.

18 MR. HALE: Well, she's on our list, too. So --

19 MS. AUERBACH: Now. You added her back.

20 THE COURT: Are there any other issues that you need
21 me to address this afternoon before -- I'll go back to the
22 autopsy for just a little bit. But any other issues that you
23 need addressed before trial?

24 MS. MOGUL: Well, just so you know, your Honor, I
25 mean, both parties all along were listing both substantive and

1 impeachment exhibits as pre-identified. And we understand you
2 only want the substantive exhibits to be produced to you on
3 Friday. We are intending to do so.

4 We have always -- you know, we have withdrawn some
5 exhibits. But we have listed things for identification
6 purposes.

7 They have now listed -- their exhibit list is only
8 the substantive exhibits. It's no longer any of the
9 impeachment exhibits.

10 THE COURT: I think that is what I asked for. I
11 wanted an exhibit list to keep track of and to go through what
12 you are seeking to admit as substantive evidence.

13 MS. MOGUL: Okay.

14 THE COURT: But that was what I asked for. And
15 especially in light of you -- you submitted your original list
16 before the Court ruled on all the motions, and you have been
17 back and forth and changing minds on things. So, I wanted
18 those substantive documents that are going to be used or
19 sought to be admitted in trial so I have those in advance.

20 MS. MOGUL: Okay. Your Honor, then I apologize. I
21 was a little unclear.

22 So, I'm going to provide you our substantive exhibits
23 and I'm going to provide you the full list that we filed, as
24 well as just the list of the substantive exhibits. It's not
25 going to be in order because it's not.

1 THE COURT: Do you have a separate list of the
2 exhibits that you are going to seek to admit at trial?

3 MS. MOGUL: No. It's just all one list.
4 Everything's been premarked. To be honest with you, your
5 Honor, this was done last August when we were preparing.
6 We're a small office. I can't -- it's taken a long time to
7 prepare.

8 I'm happy to just provide you the substantive and
9 create the table that just lists the substantive exhibits for
10 you.

11 THE COURT: Are the -- is the exhibit list -- are
12 your exhibits 1, 2, 3, 4, 5? Okay. Then I can follow it.

13 MS. MOGUL: Well, no, let me be clear. No, they're
14 not listed substantive 1 through 25. They're interspersed.

15 THE COURT: But you are identifying your exhibits by
16 number?

17 MS. MOGUL: Exactly.

18 THE COURT: Okay. Then that is fine.

19 MS. MOGUL: Okay.

20 MR. JEBSON: Judge, the five additional police
21 reports that we added, do you want for the defendants to add
22 those to their exhibit list or do you want that to be
23 plaintiff's exhibits?

24 THE COURT: Who is going to seek to admit them? I do
25 not care.

1 MR. JEBSON: It doesn't make a difference.

2 MS. AUERBACH: Do you want to, Scott?

3 MR. JEBSON: All right. Then we'll add them.

4 THE COURT: Okay.

5 MR. HALE: And, your Honor, I just wanted to note for
6 the record I tendered to the Court -- I'm tendering to
7 plaintiffs on a disc -- our Exhibits 1 through 14, which
8 encompasses anything we intend to submit as substantive
9 evidence.

10 THE COURT: Okay.

11 Any other issues?

12 MS. MOGUL: No.

13 THE COURT: Let's go back to the issue that you were
14 about to explain. Because this was another one I took under
15 advisement in 1-4 and the significance -- Defendants' 1-4, the
16 significance of this photo.

17 MR. JEBSON: Actually, there's other photos with the
18 ligature or lack of ligature marks. Do you want me to put
19 those two aside for now?

20 THE COURT: Put those aside. In light of -- see if
21 you can revisit it with each other and agree on any of these
22 in light of the Court's rulings.

23 MR. JEBSON: So, the other issue with the petechia:
24 The medical examiner and our expert is going to say that
25 because of the amount of petechia, that's more consistent with

1 a strangulation.

2 THE COURT: That is on the eyes?

3 MR. JEBSON: Exactly. It's in the eyes. It's also
4 in the mouth. So, Exhibit 1-4 is showing it on the eyes.

5 So, their opinion is that because of the amount of
6 petechia, that's more consistent with a strangulation than a
7 hanging.

8 There's also petechia on the face, as well. So, I'll
9 just identify some of those pictures.

10 1-9.

11 1-12, that's petechia in the mouth.

12 MS. MOGUL: No.

13 MR. JEBSON: 1-13.

14 1-14 shows an abrasion inside the mouth that our
15 expert has disclosed an opinion that that is consistent with
16 being pushed down against a hard object while being strangled.

17 1-15 shows petechia.

18 1-16 is a -- shows petechia on the eyes.

19 I can --

20 THE COURT: I am not going to let 1-16 in. 1-4
21 covers that, and 1-16 shows the whole face. I am not going to
22 let 1-16 in under 403.

23 MR. JEBSON: Okay. So, that's it for the petechia
24 pictures.

25 THE COURT: Okay.

1 MS. MOGUL: Your Honor, I just -- I want to be frank
2 with you because I don't want to, let's say, have my one shot
3 and miss it. Because I haven't had -- I have had an
4 opportunity to go through Dr. Denton's testimony.

5 At trial, he testified in the criminal case that the
6 physical markings on --

7 THE COURT: Dr. Denton is?

8 MS. MOGUL: Was the Cook County medical examiner.

9 THE COURT: Okay.

10 MS. MOGUL: Okay. Who testified.

11 And he testified that the markings and the physical
12 evidence on the body did not indicate whether it was an
13 accident or homicide. And the reality is whether it's a
14 strangulation or hanging, it could still be an accident or a
15 homicide.

16 In this case, the fact that there was petechiae
17 doesn't indicate one way or another. Everyone agrees where
18 there was petechiae in the eyes, you know -- and you could see
19 that Jaquari's face, his head was entirely red because he had
20 suffocated. When you asphyxiate, that is a common sign that
21 you have those red dots in your eyes.

22 Again, I just don't think that this is in dispute as
23 to the fact that there was petechiae. Our expert doesn't
24 dispute it. Dr. Denton didn't say that it was pertinent one
25 way or another.

1 I will be honest, your Honor. I haven't read
2 Dr. Peterson yet to make this argument to you. So, I guess
3 I'd ask, can you reserve ruling on this?

4 THE COURT: I am not going to rule right now.

5 MS. MOGUL: Okay.

6 THE COURT: No. I am going to wait until I hear
7 more.

8 MS. MOGUL: All right. I appreciate that, your
9 Honor.

10 THE COURT: The neck, I have heard enough that that
11 is going to be disputed, the markings and on all versus half.
12 1 and 2 will come in.

13 Are you objecting to the clothes?

14 MS. MOGUL: No, not with respect to the medical
15 examiner's photographs we are not. And, in fact, just so you.

16 THE COURT: I am sorry. Just so I am clear and so
17 the record is clear, Defendants' Exhibits 1-17 through 1-23,
18 you are not objecting to?

19 MS. MOGUL: No, your Honor. You ruled on this
20 already, and we're following your ruling. With respect to the
21 medical examiner's photos that were taken the day after
22 Jaquari died, we are not.

23 THE COURT: Okay.

24 MS. MOGUL: There is an issue with respect to photos
25 that were taken over ten years later of the clothes that we

1 are objecting to. But those aren't the medical examiner's
2 photos.

3 THE COURT: Okay.

4 Are the clothes still in existence?

5 MS. MOGUL: They are.

6 THE COURT: And are you going to seek to admit those?

7 MS. MOGUL: No.

8 THE COURT: Are you?

9 MR. JEBSON: No. We're going to use pictures
10 instead.

11 THE COURT: Okay.

12 MR. JEBSON: And just, the pictures that we want to
13 use are -- show it more clear because it's a brighter flash.

14 THE COURT: Are they in here?

15 MR. JEBSON: Yes, they are.

16 THE COURT: Okay. I will take a look at them, then.

17 MS. AUERBACH: Your Honor, just to give you an idea,
18 this is what they're talking about comparatively. And we've
19 objected for a number of reasons, including -- you know, I
20 don't know if the sweatshirt was treated with anything, but
21 the appearance in these photos with the brighter flash, I
22 think, is inconsistent with the appearance from the medical
23 examiner photos the day after the death. And I think --

24 THE COURT: I will look at them. I cannot tell
25 from --

1 MS. AUERBACH: Yeah, okay.

2 THE COURT: -- the way you are showing it.

3 MS. AUERBACH: Sure.

4 THE COURT: But I have them now, so I will look at
5 them.

6 MR. JEBSON: And, your Honor, in terms of the medical
7 examiner pictures of the sweatshirt, those are ones you really
8 have to see the digital ones -- and we'll bring those to you
9 -- because a photocopy, you really can't see the vomit on
10 there.

11 MS. MOGUL: Well, just -- I'll say this --
12 Are the digital ones on the new set of exhibits you
13 provided.

14 MR. JEBSON: Yes.

15 MS. MOGUL: Because we haven't had --

16 THE COURT: This is ten years later. You are not
17 going to be able to see the vomit on it.

18 MR. JEBSON: I'm sorry?

19 THE COURT: If it is about vomit on a sweatshirt, ten
20 years later when you take the photos, you can still see the
21 vomit?

22 MR. JEBSON: Well --

23 MS. HOFT: He used more flash.

24 MR. JEBSON: When we took the picture, there was a
25 better flash. You can see it a lot better.

1 MS. AUERBACH: Ten years later, though. That's the
2 problem.

3 THE COURT: Okay. I understand. I will take a look
4 at them.

5 We are running out of time. Is there anything else?

6 MR. HALE: We were going to do the Elmo thing today,
7 but if you'd rather we come back for that, we can come back.

8 THE COURT: My 3:00 o'clock is back in chambers, so
9 you can stay and do it today.

10 So, you are back here for jury selection next
11 Thursday, the 26th. So, please make sure that you -- why
12 don't you get here by 8:45 and we will take up any last-minute
13 issues that have to be taken up, and then we will get started
14 with jury selection.

15 I will see you next week.

16 MR. HALE: Thank you, your Honor.

17 MS. AUERBACH: Thank you, your Honor.

18 MS. MOGUL: Thank you.

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21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23 /s/ Joseph Rickhoff
24 Official Court Reporter

October 23, 2017

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